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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 RONDEL DELBERT GARDNER, ) Case No.: 1:20-cv-00240-NONE-SAB (PC)  
12 Plaintiff, )  
13 v. ) FINDINGS AND RECOMMENDATION  
14 GAVIN NEWSOM, et.al., ) RECOMMENDING PLAINTIFF'S MOTION  
15 Defendants. ) FOR DEFAULT JUDGMENT BE  
16 ) DENIED  
17 ) (ECF No. 68)  
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Plaintiff Rondel Delbert Gardner is proceeding *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for default judgment, filed January 21, 2021.

**I.**

**DISCUSSION**

Here, as best the Court can decipher, Plaintiff seeks entry of default judgment as to his alleged due process claim. Plaintiff's motion is deficient both procedurally and substantively. Procedurally, obtaining a default judgment requires adherence to a two-step process. Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). A party seeking a default judgment must first receive an entry of default from the clerk of court. Id. (citing Fed. R. Civ. P. 55(a)). Second, the party must move the court for default judgment pursuant to Rule 55(b). Id.; Lack v. Rustick, No. CV 06-2204-PHX-MHM, 2008 WL 268712, at \*1 (D. Ariz. Jan. 28, 2008). Here, there is no evidence that plaintiff has ever sought or

1 obtained an entry of default from the Clerk of Court. Thus, there is no basis upon which to grant  
2 Plaintiff's motion for default judgment.

3 In addition to not complying with the requirements of Rule 55, Plaintiff's motion for a default  
4 judgment lacks merit. Plaintiff is only entitled to a default judgment if Defendant failed "to plead or  
5 otherwise defend." Fed. R. Civ. P. 55. Here, Defendant filed a motion to dismiss pursuant to Rule  
6 12(b)(6), thereby defending himself for purposes of Rule 55. (ECF No. 51.) Moreover, and critical to  
7 Plaintiff's request, Defendant's motion to dismiss the due process claim was granted on January 8,  
8 2021, and the claim was dismissed from the action. (ECF No. 66.) Therefore, Plaintiff's motion for  
9 default judgment must be denied.

10 **II.**

11 **RECOMMENDATION**

12 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's motion for default  
13 judgment be denied.

14 This Findings and Recommendation will be submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**  
16 after being served with this Findings and Recommendation, the parties may file written objections  
17 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and  
18 Recommendation." The parties are advised that failure to file objections within the specified time may  
19 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)  
20 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21  
22 IT IS SO ORDERED.

23 Dated: **January 22, 2021**

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UNITED STATES MAGISTRATE JUDGE